

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of the Commission's Rules Regarding
Maritime Automatic Identification Systems
WT Docket No. 04-344

ORDER

Adopted: February 24, 2011

Released: February 25, 2011

By the Chief, Wireless Telecommunications Bureau:

1. In this Order, we grant a limited, temporary waiver of the requirement for certain inland VHF Public Coast (VPC) Service Area (VPCSA) licensees that are licensed to operate on maritime VHF Channel 87B (161.975 MHz). Specifically, we grant a limited extension of time, to those inland VPCSA licensees that are required to protect incumbent public safety operations on Channels 84 (157.225/161.825 MHz) or 85 (157.275/161.875 MHz), of the date by which they are required to vacate Channel 87B.

2. In the Second Report and Order in this proceeding, the Commission decided that Channel 87B should be designated exclusively for Automatic Identification Systems (AIS) in the inland VPCSAs. In conjunction with this determination, the Commission crafted a framework for clearing Channel 87B of non-AIS operations in the inland VPCSAs. Specifically, it required inland VPCSA licensees to cease operation on Channel 87B within two years of the effective date of the new rules (i.e., March 2, 2011), but designated additional maritime VHF spectrum – Channel 84 or 85 – for use by the

1 See 47 C.F.R. §§ 2.106 n.US228, 80.371(c)(1)(i) n.3. Note US228 originally was codified as note US399, but was renumbered. See Amendment of Parts 1, 2, 15, 25, 73, and 90 of the Commission's Rules to Make Non-Substantive Editorial Revisions to the Table of Frequency Allocations and to Various Other Rules, Order, 25 FCC Rcd 9712, 9720 ¶ 16 Table 2 (OET/OMD 2010).

2 See PacifiCorp Petition for Reconsideration (filed Mar. 2, 2009) (Petition).

3 AIS is defined under the Commission's Rules as "[a] maritime navigation safety communications system standardized by the International Telecommunication Union (ITU) and adopted by the International Maritime Organization (IMO) that provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft; receives automatically such information from similarly fitted ships; and exchanges data with shore-based facilities." 47 C.F.R. § 80.5. It is used to monitor maritime vessel traffic for both navigational safety and homeland security purposes.

4 See Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, Second Report and Order, WT Docket No. 04-344, 23 FCC Rcd 13711, 13716 ¶ 8 (2008), erratum, 24 FCC Rcd 3241 (2008) (Second Report and Order), recon. pending. The Commission had previously designated Channel 87B for exclusive AIS use in the maritime VPCSAs. See Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems, Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 04-344 & PR Docket No. 92-257, 21 FCC Rcd 8892, 8904 ¶ 18, 8907-08 ¶¶ 23-24 (2006).

5 See Second Report and Order, 23 FCC Rcd at 13722-25 ¶¶ 17-21.

6 See 74 Fed. Reg. 5117 (Jan. 29, 2009).

inland VPCSA licensees as a replacement for Channel 87B.⁷ Channel 84 or Channel 85, but not both, had been set aside in each inland VPCSA for public safety interoperability.⁸ In the *Second Report and Order*, the Commission redesignated these two channels for VPC use, but grandfathered existing public safety users of the channels for fifteen years.⁹

3. On our own motion, we grant a limited waiver of the compliance deadline for those inland VPCSA licensees that are licensed for areas where they would be required to protect grandfathered incumbent public safety users of Channels 84 or 85.¹⁰ In the *Second Report and Order*, the Commission indicated that it is balancing three competing goals: ensuring the expeditious and effective deployment of AIS, minimizing any adverse effects on inland VPCSA incumbents stemming from the loss of Channel 87B, and minimizing any adverse effects on public safety incumbents from the redesignation of Channels 84 and 85.¹¹ We acknowledge that those VPCSA operating in areas where Channels 84 or 85 are being used actively by public safety incumbents face a hurdle that does not affect those VPCSA operating where Channels 84 or 85 are unencumbered.¹² We therefore, on our own motion, grant a six month waiver of the March 2, 2011 deadline for those inland VPCSA licensees for which Channels 84 or 85 are encumbered by grandfathered public safety incumbents.¹³ This additional time should allow the affected VPCSA licensees to make appropriate arrangements across their networks and ensure a smooth transition both in areas where Channels 84 and 85 are immediately available and elsewhere.

4. Accordingly, IT IS ORDERED, pursuant to Section 4 of the Communications Act of

⁷ See *Second Report and Order*, 23 FCC Rcd at 13725 ¶ 21. The inland VPCSA licensees were permitted to remain on Channel 87B for up to two years, but were allowed to apply to modify their licenses to replace Channel 87B with Channel 84 or 85 at any time within the two-year period. The Commission stated that at the end of the two-year period, it would modify any inland VPCSA licenses that had not yet been modified by the licensee. *Id.*

⁸ *Id.* at 13723 ¶ 18.

⁹ *Id.* at 13724 ¶ 20. There are five grandfathered licensees on Channel 84 and 85 in the inland VPCSA: State of Wyoming (Stations WQJA319, Cheyenne, KB9153 (mobile-only), WQJA320, Fremont County, WQJA429, Cody-Spotted Horse, WAJA434, Sheridan, Big Horn, and Washakie Counties, WQJA439, Johnson and Weston Counties, WQJA441, Campbell and Crook Counties, WQJA446, Niobrara, Goshen, Lincoln, and Teton Counties, WQJA452, Carbon County, WQJA455, Natrona and Converse Counties, and WQJA458, Albany and Platte Counties); County of Placer, California (Station WQFE808, Reno, Nevada); Panhandle Regional Planning Commission (Station WQGV794, Amarillo, Texas); County of Silverbow, Montana (Station WQKX733, Butte, Montana); and State of Montana (Station WQMK540, Big Arm, Montana). Inland VPCSA licensees must provide at least 10 dB protection to their predicted 38 dBu signal level contour in accordance with co-channel interference protection standard in Section 80.773(b) of the Commission's Rules, 47 C.F.R. § 80.773(b). See *Second Report and Order*, 23 FCC Rcd at 13725 n.97.

¹⁰ The Commission may waive any provision of its rules on its own motion for good cause shown. 47 C.F.R. § 1.3. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed*, 459 F.2d 1203 (D.C. Cir. 1972). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166.

¹¹ See *Second Report and Order*, 23 FCC Rcd at 13712 ¶ 1, 13723 ¶ 17, 13724-25 ¶ 20.

¹² See, e.g., PacifiCorp, Petition for Reconsideration, WT Docket No. 04-344 (filed Mar. 2, 2009), at 5 (noting that access to replacement channels 84 and 85 will not be available in some areas because of use of those channels by incumbent public safety licensees).

¹³ Specifically, MariTEL, Inc., Motorola Solutions, Inc., PacifiCorp, State of Montana, Telesaurus Holdings GB, Inc., and Verde Systems, LLC.

1934, as amended, 47 U.S.C. § 154, and Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, that Section 2.106 note US228 of the Rules, 47 C.F.R. § 2.106 n.US228, and Section 80.371(c)(1)(i) note 3 of the Rules, 47 C.F.R. § 80.371(c)(1)(i) n.3, ARE WAIVED to the extent provided herein.

5. IT IS FURTHER ORDERED that this *Order* is effective upon release.

6. These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331

FEDERAL COMMUNICATIONS COMMISSION

Ruth Milkman
Chief
Wireless Telecommunications Bureau